

**Introduced by Senator Negrete McLeod**

February 19, 2010

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An act to amend Section 6253 of the Government Code, relating to public records.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1324, as introduced, Negrete McLeod. Public records: fees: commercial use.

Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover direct costs of duplication, or applicable statutory fees.

This bill would authorize an agency to impose a fee, in addition to a fee to cover the direct costs of duplication, to cover the actual cost of staff search and review time, as defined, where the request is made for commercial use, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6253 of the Government Code is amended
- 2     to read:
- 3     6253. (a) Public records are open to inspection at all times
- 4     during the office hours of the state or local agency and every person
- 5     has a right to inspect any public record, except as hereafter
- 6     provided. Any reasonably segregable portion of a record shall be

1 available for inspection by any person requesting the record after  
2 deletion of the portions that are exempted by law.

3 (b) (1) Except with respect to public records exempt from  
4 disclosure by express provisions of law, each state or local agency,  
5 upon a request for a copy of records that reasonably describes an  
6 identifiable record or records, shall make the records promptly  
7 available to any person upon payment of fees covering direct costs  
8 of duplication, or a statutory fee if applicable. Upon request, an  
9 exact copy shall be provided unless impracticable to do so.

10 (2) (A) *Notwithstanding paragraph (1), in the case of a request*  
11 *for records for commercial use, an agency may, in addition to a*  
12 *fee covering direct costs of duplication pursuant to paragraph (1),*  
13 *impose a fee reasonably calculated to cover the actual cost of staff*  
14 *search and review time, based on an hourly rate for salary and*  
15 *benefits of each employee involved.*

16 (B) *For purposes of this paragraph, “commercial use” means*  
17 *a request for a use or purpose that furthers the commercial, trade,*  
18 *or profit interests of the requestor or the person on whose behalf*  
19 *the request is being made. A request from a representative of the*  
20 *news media, including a person who regularly gathers, prepares,*  
21 *collects, photographs, records, writes, edits, reports, or publishes*  
22 *news or information that concerns local, national, or international*  
23 *events or other matters of public dissemination to the public for*  
24 *a substantial portion of the person’s livelihood or for substantial*  
25 *financial gain, that supports a news-dissemination function is not*  
26 *a request for a commercial use.*

27 (C) *For purposes of this paragraph, “search and review time”*  
28 *means actual time spent identifying and locating records, including*  
29 *material within documents, responsive to a request, determining*  
30 *whether any portions are exempt from disclosure, and performing*  
31 *all tasks necessary to prepare for the records disclosure, including*  
32 *redacting portions exempt from disclosure. Search and review*  
33 *time does not include time spent resolving general legal or policy*  
34 *issues regarding the applicability of particular exemptions.*

35 (c) Each agency, upon a request for a copy of records, shall,  
36 within 10 days from receipt of the request, determine whether the  
37 request, in whole or in part, seeks copies of disclosable public  
38 records in the possession of the agency and shall promptly notify  
39 the person making the request of the determination and the reasons  
40 therefor. In unusual circumstances, the time limit prescribed in

1 this section may be extended by written notice by the head of the  
2 agency or his or her designee to the person making the request,  
3 setting forth the reasons for the extension and the date on which  
4 a determination is expected to be dispatched. No notice shall  
5 specify a date that would result in an extension for more than 14  
6 days. When the agency dispatches the determination, and if the  
7 agency determines that the request seeks disclosable public records,  
8 the agency shall state the estimated date and time when the records  
9 will be made available. As used in this section, “unusual  
10 circumstances” means the following, but only to the extent  
11 reasonably necessary to the proper processing of the particular  
12 request:

13 (1) The need to search for and collect the requested records  
14 from field facilities or other establishments that are separate from  
15 the office processing the request.

16 (2) The need to search for, collect, and appropriately examine  
17 a voluminous amount of separate and distinct records that are  
18 demanded in a single request.

19 (3) The need for consultation, which shall be conducted with  
20 all practicable speed, with another agency having substantial  
21 interest in the determination of the request or among two or more  
22 components of the agency having substantial subject matter interest  
23 therein.

24 (4) The need to compile data, to write programming language  
25 or a computer program, or to construct a computer report to extract  
26 data.

27 (d) Nothing in this chapter shall be construed to permit an  
28 agency to delay or obstruct the inspection or copying of public  
29 records. The notification of denial of any request for records  
30 required by Section 6255 shall set forth the names and titles or  
31 positions of each person responsible for the denial.

32 (e) Except as otherwise prohibited by law, a state or local agency  
33 may adopt requirements for itself that allow for faster, more  
34 efficient, or greater access to records than prescribed by the  
35 minimum standards set forth in this chapter.

36 SEC. 2. The Legislature finds and declares that Section 1 of  
37 this act, which amends Section 6253 of the Government Code,  
38 imposes a limitation of the public’s right of access to the meetings  
39 of public bodies or the writings of public officials and agencies  
40 within the meaning of Section 3 of Article I of the California

1 Constitution. Pursuant to that constitutional provision, the  
2 Legislature makes the following findings to demonstrate the interest  
3 protected by this limitation and the need for protecting that interest:  
4 In order to enable public agencies to recover the cost of public  
5 record inspection requests from commercial requestors, it is  
6 necessary to enact this act.

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